

Decision providing the Independent Judicial Commission (IJC) with a comprehensive mandate

In the exercise of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling Article II, 8 of the last said Agreement according to the terms of which the High Representative may, in addition to the Civilian Commissions referred to specifically in Article II thereof, establish other civilian commissions to facilitate the execution of his mandate;

Recalling further paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) measures to ensure the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Mindful of paragraph I.2.a. of the Conclusions of the said Bonn Conference which recognised “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina”, that the judicial appointment process must be based on merit, that a judicial training facility must be established, and that the monitoring of the judicial system was an essential element of the aforesaid process;

Guided by paragraph II.2 of the Annex to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) which “emphasize[d] the importance of intensified judicial reform efforts, co-ordinated by the High Representative, to support the efforts of the authorities in BiH [Bosnia and Herzegovina]” and “urge[d] the High Representative to further develop a comprehensive judicial reform strategic plan, identifying short and longer-term priorities, in consultation with the authorities, the Council of Europe, OSCE, UNMIBH and other organizations”;

Considering the Declaration of the Peace Implementation Council (Brussels, 23/24 May 2000) calling for a truly independent and impartial judiciary to ensure the Rule of Law in all criminal, civil and commercial matters and noting “the continued need for an international oversight institution for judicial reform pending OHR’s solution of the Judicial Reform programme” and that the Council “supports the continuing efforts of the High Representative to lead the Judicial Reform effort and co-ordinate the efforts of the international community on the issue”;

Taking into account the Communiqué of the Steering Board of the Peace Implementation Council (Sarajevo, 13 July 2000) where the “Steering Board and the High Representative agreed that the issue of judicial reform and the promotion of the rule of law needed a sustained effort by the International Community. To this end, the High Representative will establish the Independent Judicial Commission which will be tasked with the supervision of the entity and cantonal commissions/council responsible for selecting and disciplining judges and prosecutors and to continue the monitoring and assessment of courts and prosecutor’s offices in line with the closing mandate of JSAP”;

Having considered the foregoing matters, I hereby issue the following

DECISION

On the Establishment of the Independent Judicial Commission

1. This Decision establishes and vests the Independent Judicial Commission with responsibilities and authorities in line with its mandate.

2. The mandate of the Independent Judicial Commission shall embrace matters regarding promotion of the rule of law and judicial reform. The responsibilities of the Independent Judicial Commission shall be in line with this mandate and include:

- to provide assistance and evaluations to the judicial, prosecutorial and governmental institutions, and to the professional legal organizations, including ensuring that the judicial and prosecutorial commissions enforce high standards of ethics and professionalism;
- to guide and coordinate reforms affecting the judiciary, the prosecutor's office, professional associations, and related structures, procedures or institutions, including assisting in or facilitating the development of new legislation;
- to advise, assist, and oversee domestic judicial training bodies and other related institutions;
- to provide advice and information to domestic and international bodies, development agencies, and non governmental agencies on judicial reform initiatives, including issuing reports documenting or analyzing the work of the judiciary, the prosecutor's office, the bar association, ministries of justices, and the criminal and civil justice systems; and
- to advise the High Representative on a regular basis on matters concerning the above mandate.

3. In carrying out of its mandate and responsibilities, the Independent Judicial Commission shall have the following authorities:

- to initiate contacts with international organizations and domestic bodies, agencies, institutions, or organizations to promote rule of law projects such as professional training, institution and capacity building, and related projects;
- to ensure that the judicial and prosecutorial commissions and councils comply with their legal obligations. To that end, the IJC will have the right to intervene in the proceedings of the commissions and councils and, alternatively, to request the suspension of the process until the High Representative takes a final decision on the matter; and
- to propose to the High Representative the exercise of his power under the Dayton Peace Agreement or the terms of its implementation;

4. All judges, prosecutors, officials in the Ministries of Interior, Finance and Justice, and members of judicial/prosecutorial commissions and councils have an obligation to disclose information needed for the IJC to carry out its responsibilities under article 2 of this decision.

5. The Independent Judicial Commission shall have a Director, who shall oversee its operations and report to the High Representative. The Director shall be responsible for making proposals to the High Representative as to the Commission's budget and staffing, preparing a six monthly action plan for its work, and for submitting to him periodic reports on the Commission's activities.

6. The High Representative reserves the right to provide additional responsibilities to the Independent Judicial Commission, as may be required to carry out its mandate.

7. The mandate of the Independent Judicial Commission shall expire on 31 December 2002. The High Representative retains the authority to decide on the principles and timeframes, including the authority and number of remaining international staff, for a possible continuation of the Independent Judicial Commission.

8. This Decision shall enter into force on the day of its signature and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and its Cantons, and of Republika Srpska.

Sarajevo, 14 March 2001

Wolfgang Petritsch
High Representative

Office of the High Representative